

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE #2 FOR
HOUSE BILL NO. 568
93RD GENERAL ASSEMBLY

Reported from the Committee on Children and Families April 6, 2005, with recommendation that the House Committee Substitute #2 for House Bill No. 568 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1225L.06C

AN ACT

To repeal sections 210.117, 211.037, 211.038, 211.447, 452.375, and 452.400, RSMo, and to enact in lieu thereof six new sections relating to protection of children.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.117, 211.037, 211.038, 211.447, 452.375, and 452.400, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 210.117, 211.037, 211.038, 211.447, 452.375, and 452.400, to read as follows:

210.117. [No] **1. A child taken into the custody of the state shall not be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, [a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this section shall preclude the division from exercising its discretion regarding the placement of a child in a home in which the parent or any person residing in the home has been found guilty of or pled guilty or nolo contendere to any offense excepted or excluded in this section] any of the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 following offenses when a child was the victim:

15 (1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062,
16 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203,
17 566.206, 566.209, 566.212, or 566.215, RSMo;

18 (2) A violation of section 568.020, RSMo;

19 (3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

20 (4) A violation of section 568.065, RSMo;

21 (5) A violation of section 568.080, RSMo;

22 (6) A violation of section 568.090, RSMo; or

23 (7) A violation of section 568.175, RSMo.

24 2. For all other violations of offenses in chapters 566 and 568, RSMo, not
25 specifically listed in subsection 1 of this section or for a violation of an offense committed
26 in another state when a child is the victim that would be a violation of chapter 566 or 568,
27 RSMo, if committed in Missouri, the division may exercise its discretion regarding the
28 placement of a child taken into the custody of the state in which a parent or any person
29 residing in the home has been found guilty of, or pled guilty to, any such offense.

211.037. 1. For purposes of proceedings and investigations conducted pursuant to this
2 chapter, children shall be promptly returned to the care and custody of a nonoffending parent
3 entitled to physical custody of the child if:

4 (1) The parents have continuously maintained joint domicile for a period of at least six
5 months prior to the alleged incident or the parents are maintaining separate households; and

6 (2) A preponderance of the evidence indicates that only one of the parents is the subject
7 of an investigation of abuse or neglect; and

8 (3) The nonoffending parent does not have a history of criminal behavior, drug or
9 alcohol abuse, child abuse or child neglect, domestic violence, **or** stalking[, or full orders of
10 protection entered against them] within the past five years; and

11 (4) The parents are maintaining joint domicile and the offending parent is removed from
12 the home voluntarily or involuntarily, or the parents live separately and the child is removed
13 from the home of the [custodial] **offending** parent; and

14 (5) A nonoffending parent requests custody of the child and agrees to cooperate with any
15 orders of the court limiting contact or establishing visitation with the offending parent and the
16 nonoffending parent complies with such orders.

17

18 When the parents maintain joint domicile or comply with court-ordered visitation, there shall be
19 a rebuttable presumption that the nonoffending parent has not committed any violation of
20 sections 568.030, 568.032, 568.045, 568.050, or 568.060, RSMo, or has not engaged in any

21 conduct that would constitute child abuse or neglect under chapter 210, RSMo. In order to rebut
22 the presumption there must be a finding of actual harm or endangerment to the child if the child
23 is placed in the custody of the nonoffending parent.

24 2. Nothing in this section shall prevent the division or the court from exercising its
25 discretion to return a child or children to the custody of any individual.

211.038. [No] **1. A child under the jurisdiction of the juvenile court shall **not** be reunited**
2 with a parent or placed in a home in which the parent or any person residing in the home has
3 been found guilty of, or pled guilty to, [a felony violation of chapter 566, RSMo, except for
4 section 566.034, RSMo, when a child was the victim, or a violation of sections 568.020,
5 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for
6 subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an
7 offense committed in another state when a child is the victim, that would be a felony violation
8 of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of sections 568.020,
9 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for
10 subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided
11 however, nothing in this section shall preclude the juvenile court from exercising its discretion
12 regarding the placement of a child in a home in which the parent or any person residing in the
13 home has been found guilty of or pled guilty or nolo contendere to any offense excepted or
14 excluded in this section] **any of the following offenses when a child was the victim:**

15 **(1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062,**
16 **566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203,**
17 **566.206, 566.209, 566.212, or 566.215, RSMo;**

18 **(2) A violation of section 568.020, RSMo;**

19 **(3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;**

20 **(4) A violation of section 568.065, RSMo;**

21 **(5) A violation of section 568.080, RSMo;**

22 **(6) A violation of section 568.090, RSMo; or**

23 **(7) A violation of section 568.175, RSMo.**

24 **2. For all other violations of offenses in chapters 566 and 568, RSMo, not**
25 **specifically listed in subsection 1 of this section or for a violation of an offense committed**
26 **in another state when a child is the victim that would be a violation of chapter 566 or 568,**
27 **RSMo, if committed in Missouri, the juvenile court may exercise its discretion regarding**
28 **the placement of a child under the jurisdiction of the juvenile court in a home in which a**
29 **parent or any person residing in the home has been found guilty of, or pled guilty to, any**
30 **such offense.**

211.447. 1. Any information that could justify the filing of a petition to terminate

2 parental rights may be referred to the juvenile officer by any person. The juvenile officer shall
3 make a preliminary inquiry and if it does not appear to the juvenile officer that a petition should
4 be filed, such officer shall so notify the informant in writing within thirty days of the referral.
5 Such notification shall include the reasons that the petition will not be filed. Thereupon, the
6 informant may bring the matter directly to the attention of the judge of the juvenile court by
7 presenting the information in writing, and if it appears to the judge that the information could
8 justify the filing of a petition, the judge may order the juvenile officer to take further action,
9 including making a further preliminary inquiry or filing a petition.

10 2. Except as provided for in subsection 3 of this section, a petition to terminate the
11 parental rights of the child's parent or parents shall be filed by the juvenile officer or the division,
12 or if such a petition has been filed by another party, the juvenile officer or the division shall seek
13 to be joined as a party to the petition, when:

14 (1) Information available to the juvenile officer or the division establishes that the child
15 has been in foster care for at least fifteen of the most recent twenty-two months; or

16 (2) A court of competent jurisdiction has determined the child to be an abandoned infant.
17 For purposes of this subdivision, an "infant" means any child one year of age or under at the time
18 of filing of the petition. The court may find that an infant has been abandoned if:

19 (a) The parent has left the child under circumstances that the identity of the child was
20 unknown and could not be ascertained, despite diligent searching, and the parent has not come
21 forward to claim the child; or

22 (b) The parent has, without good cause, left the child without any provision for parental
23 support and without making arrangements to visit or communicate with the child, although able
24 to do so; or

25 (3) A court of competent jurisdiction has determined that the parent has:

26 (a) Committed murder of another child of the parent; or

27 (b) Committed voluntary manslaughter of another child of the parent; or

28 (c) Aided or abetted, attempted, conspired or solicited to commit such a murder or
29 voluntary manslaughter; or

30 (d) Committed a felony assault that resulted in serious bodily injury to the child or to
31 another child of the parent.

32 3. If grounds exist for termination of parental rights pursuant to subsection 2 of this
33 section, the juvenile officer or the division may, but is not required to, file a petition to terminate
34 the parental rights of the child's parent or parents if:

35 (1) The child is being cared for by a relative; or

36 (2) There exists a compelling reason for determining that filing such a petition would
37 not be in the best interest of the child, as documented in the permanency plan which shall be

38 made available for court review; or

39 (3) The family of the child has not been provided such services as provided for in section
40 211.183.

41 4. The juvenile officer or the division may file a petition to terminate the parental rights
42 of the child's parent when it appears that one or more of the following grounds for termination
43 exist:

44 (1) The child has been abandoned. For purposes of this subdivision a "child" means any
45 child over one year of age at the time of filing of the petition. The court shall find that the child
46 has been abandoned if, for a period of six months or longer:

47 (a) The parent has left the child under such circumstances that the identity of the child
48 was unknown and could not be ascertained, despite diligent searching, and the parent has not
49 come forward to claim the child; or

50 (b) The parent has, without good cause, left the child without any provision for parental
51 support and without making arrangements to visit or communicate with the child, although able
52 to do so;

53 (2) The child has been abused or neglected. In determining whether to terminate parental
54 rights pursuant to this subdivision, the court shall consider and make findings on the following
55 conditions or acts of the parent:

56 (a) A mental condition which is shown by competent evidence either to be permanent
57 or such that there is no reasonable likelihood that the condition can be reversed and which
58 renders the parent unable to knowingly provide the child the necessary care, custody and control;

59 (b) Chemical dependency which prevents the parent from consistently providing the
60 necessary care, custody and control of the child and which cannot be treated so as to enable the
61 parent to consistently provide such care, custody and control;

62 (c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child
63 or any child in the family by the parent, including an act of incest, or by another under
64 circumstances that indicate that the parent knew or should have known that such acts were being
65 committed toward the child or any child in the family; or

66 (d) Repeated or continuous failure by the parent, although physically or financially able,
67 to provide the child with adequate food, clothing, shelter, or education as defined by law, or other
68 care and control necessary for the child's physical, mental, or emotional health and development;

69 (3) The child has been under the jurisdiction of the juvenile court for a period of one
70 year, and the court finds that the conditions which led to the assumption of jurisdiction still
71 persist, or conditions of a potentially harmful nature continue to exist, that there is little
72 likelihood that those conditions will be remedied at an early date so that the child can be returned
73 to the parent in the near future, or the continuation of the parent-child relationship greatly

74 diminishes the child's prospects for early integration into a stable and permanent home. In
75 determining whether to terminate parental rights under this subdivision, the court shall consider
76 and make findings on the following:

77 (a) The terms of a social service plan entered into by the parent and the division and the
78 extent to which the parties have made progress in complying with those terms;

79 (b) The success or failure of the efforts of the juvenile officer, the division or other
80 agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to
81 provide a proper home for the child;

82 (c) A mental condition which is shown by competent evidence either to be permanent
83 or such that there is no reasonable likelihood that the condition can be reversed and which
84 renders the parent unable to knowingly provide the child the necessary care, custody and control;

85 (d) Chemical dependency which prevents the parent from consistently providing the
86 necessary care, custody and control over the child and which cannot be treated so as to enable
87 the parent to consistently provide such care, custody and control; or

88 (4) The parent has been found guilty or pled guilty to a felony violation of chapter 566,
89 RSMo, when the child or any child in the family was a victim, or a violation of section 568.020,
90 RSMo, when the child or any child in the family was a victim. As used in this subdivision, a
91 "child" means any person who was under eighteen years of age at the time of the crime and who
92 resided with such parent or was related within the third degree of consanguinity or affinity to
93 such parent; or

94 (5) The child was conceived and born as a result of an act of forcible rape. When the
95 biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such
96 a plea or conviction shall be conclusive evidence supporting the termination of the biological
97 father's parental rights; or

98 (6) The parent is unfit to be a party to the parent and child relationship because of a
99 consistent pattern of committing a specific abuse, including but not limited to, abuses as defined
100 in section 455.010, RSMo, child abuse or drug abuse before the child or of specific conditions
101 directly relating to the parent and child relationship either of which are determined by the court
102 to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future,
103 to care appropriately for the ongoing physical, mental or emotional needs of the child. It is
104 presumed that a parent is unfit to be a party to the parent-child relationship upon a showing that
105 within a three-year period immediately prior to the termination adjudication, the parent's parental
106 rights to one or more other children were involuntarily terminated pursuant to subsection 2 or
107 3 of this section or subdivisions (1), (2), (3) or (4) of subsection 4 of this section or similar laws
108 of other states.

109 5. The juvenile court may terminate the rights of a parent to a child upon a petition filed

110 by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court
111 finds that the termination is in the best interest of the child and when it appears by clear, cogent
112 and convincing evidence that grounds exist for termination pursuant to subsection 2, 3 or 4 of
113 this section.

114 6. When considering whether to terminate the parent-child relationship pursuant to
115 subsection 2 or 3 of this section or subdivision (1), (2), (3) or (4) of subsection 4 of this section,
116 the court shall evaluate and make findings on the following factors, when appropriate and
117 applicable to the case:

118 (1) The emotional ties to the birth parent;

119 (2) The extent to which the parent has maintained regular visitation or other contact with
120 the child;

121 (3) The extent of payment by the parent for the cost of care and maintenance of the child
122 when financially able to do so including the time that the child is in the custody of the division
123 or other child-placing agency;

124 (4) Whether additional services would be likely to bring about lasting parental
125 adjustment enabling a return of the child to the parent within an ascertainable period of time;

126 (5) The parent's disinterest in or lack of commitment to the child;

127 (6) The conviction of the parent of a felony offense that the court finds is of such a
128 nature that the child will be deprived of a stable home for a period of years; provided, however,
129 that incarceration in and of itself shall not be grounds for termination of parental rights;

130 (7) Deliberate acts of the parent or acts of another of which the parent knew or should
131 have known that subjects the child to a substantial risk of physical or mental harm.

132 7. The court may attach little or no weight to infrequent visitations, communications, or
133 contributions. It is irrelevant in a termination proceeding that the maintenance of the
134 parent-child relationship may serve as an inducement for the parent's rehabilitation.

135 8. In actions for adoption pursuant to chapter 453, RSMo, the court may hear and
136 determine the issues raised in a petition for adoption containing a prayer for termination of
137 parental rights filed with the same effect as a petition permitted pursuant to subsection 2, 3 or
138 4 of this section.

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

2 (1) "Custody", means joint legal custody, sole legal custody, joint physical custody or
3 sole physical custody or any combination thereof;

4 (2) "Joint legal custody" means that the parents share the decision-making rights,
5 responsibilities, and authority relating to the health, education and welfare of the child, and,
6 unless allocated, apportioned, or decreed, the parents shall confer with one another in the
7 exercise of decision-making rights, responsibilities, and authority;

8 (3) "Joint physical custody" means an order awarding each of the parents significant, but
9 not necessarily equal, periods of time during which a child resides with or is under the care and
10 supervision of each of the parents. Joint physical custody shall be shared by the parents in such
11 a way as to assure the child of frequent, continuing and meaningful contact with both parents;

12 (4) "Third-party custody" means a third party designated as a legal and physical
13 custodian pursuant to subdivision (5) of subsection 5 of this section.

14 2. The court shall determine custody in accordance with the best interests of the child.
15 The court shall consider all relevant factors including:

16 (1) The wishes of the child's parents as to custody and the proposed parenting plan
17 submitted by both parties;

18 (2) The needs of the child for a frequent, continuing and meaningful relationship with
19 both parents and the ability and willingness of parents to actively perform their functions as
20 mother and father for the needs of the child;

21 (3) The interaction and interrelationship of the child with parents, siblings, and any other
22 person who may significantly affect the child's best interests;

23 (4) Which parent is more likely to allow the child frequent, continuing and meaningful
24 contact with the other parent;

25 (5) The child's adjustment to the child's home, school, and community;

26 (6) The mental and physical health of all individuals involved, including any history of
27 abuse of any individuals involved. If the court finds that a pattern of domestic violence has
28 occurred, and, if the court also finds that awarding custody to the abusive parent is in the best
29 interest of the child, then the court shall enter written findings of fact and conclusions of law.
30 Custody and visitation rights shall be ordered in a manner that best protects the child and any
31 other child or children for whom the parent has custodial or visitation rights, and the parent or
32 other family or household member who is the victim of domestic violence from any further
33 harm;

34 (7) The intention of either parent to relocate the principal residence of the child; and

35 (8) The wishes of a child as to the child's custodian.

36

37 The fact that a parent sends his or her child or children to a home school, as defined in section
38 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such
39 child or children.

40 3. (1) In any court proceedings relating to custody of a child, the court shall not award
41 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
42 such parent has been found guilty of, or pled guilty to, [a felony violation of chapter 566, RSMo,
43 except for section 566.034, RSMo, when a child was the victim, or a violation of section

44 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for
45 subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an
46 offense committed in another state when a child is the victim, that would be a felony violation
47 of chapter 566, RSMo, except for section 566.034, RSMo, or section 568.020, 568.045, 568.060,
48 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection
49 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this
50 subsection shall preclude the court from exercising its discretion regarding the awarding of
51 custody or visitation for a child if the parent or any person residing in the home has been found
52 guilty of or pled guilty or nolo contendere to any offense excepted or excluded in this subsection]
53 **any of the following offenses when a child was the victim:**

- 54 (a) **A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062,**
55 **566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203,**
56 **566.206, 566.209, 566.212, or 566.215, RSMo;**
57 (b) **A violation of section 568.020, RSMo;**
58 (c) **A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;**
59 (d) **A violation of section 568.065, RSMo;**
60 (e) **A violation of section 568.080, RSMo;**
61 (f) **A violation of section 568.090, RSMo; or**
62 (g) **A violation of section 568.175, RSMo.**

63 (2) **For all other violations of offenses in chapters 566 and 568, RSMo, not**
64 **specifically listed in subdivision (1) of this subsection or for a violation of an offense**
65 **committed in another state when a child is the victim that would be a violation of chapter**
66 **566 or 568, RSMo, if committed in Missouri, the court may exercise its discretion in**
67 **awarding custody or visitation of a child to a parent if such parent or any person residing**
68 **with such parent has been found guilty of, or pled guilty to, any such offense.**

69 4. The general assembly finds and declares that it is the public policy of this state that
70 frequent, continuing and meaningful contact with both parents after the parents have separated
71 or dissolved their marriage is in the best interest of the child, except for cases where the court
72 specifically finds that such contact is not in the best interest of the child, and that it is the public
73 policy of this state to encourage parents to participate in decisions affecting the health, education
74 and welfare of their children, and to resolve disputes involving their children amicably through
75 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
76 custody arrangement which will best assure both parents participate in such decisions and have
77 frequent, continuing and meaningful contact with their children so long as it is in the best
78 interests of the child.

79 5. Prior to awarding the appropriate custody arrangement in the best interest of the child,

80 the court shall consider each of the following as follows:

81 (1) Joint physical and joint legal custody to both parents, which shall not be denied
82 solely for the reason that one parent opposes a joint physical and joint legal custody award. The
83 residence of one of the parents shall be designated as the address of the child for mailing and
84 educational purposes;

85 (2) Joint physical custody with one party granted sole legal custody. The residence of one
86 of the parents shall be designated as the address of the child for mailing and educational
87 purposes;

88 (3) Joint legal custody with one party granted sole physical custody;

89 (4) Sole custody to either parent; or

90 (5) Third-party custody or visitation:

91 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
92 or the welfare of the child requires, and it is in the best interests of the child, then custody,
93 temporary custody or visitation may be awarded to any other person or persons deemed by the
94 court to be suitable and able to provide an adequate and stable environment for the child. Before
95 the court awards custody, temporary custody or visitation to a third person under this
96 subdivision, the court shall make that person a party to the action;

97 (b) Under the provisions of this subsection, any person may petition the court to
98 intervene as a party in interest at any time as provided by supreme court rule.

99 6. If the parties have not agreed to a custodial arrangement, or the court determines such
100 arrangement is not in the best interest of the child, the court shall include a written finding in the
101 judgment or order based on the public policy in subsection 4 of this section and each of the
102 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific
103 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
104 custodial arrangement is rejected by the court, the court shall include a written finding in the
105 judgment or order detailing the specific relevant factors resulting in the rejection of such
106 arrangement.

107 7. Upon a finding by the court that either parent has refused to exchange information
108 with the other parent, which shall include but not be limited to information concerning the
109 health, education and welfare of the child, the court shall order the parent to comply immediately
110 and to pay the prevailing party a sum equal to the prevailing party's cost associated with
111 obtaining the requested information, which shall include but not be limited to reasonable
112 attorney's fees and court costs.

113 8. As between the parents of a child, no preference may be given to either parent in the
114 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
115 or sex of the child.

116 9. Any judgment providing for custody shall include a specific written parenting plan
117 setting forth the terms of such parenting plan arrangements specified in subsection 7 of section
118 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
119 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
120 approved and ordered by the court shall be in the court's discretion and shall be in the best
121 interest of the child.

122 10. Unless a parent has been denied custody rights pursuant to this section or visitation
123 rights under section 452.400, both parents shall have access to records and information
124 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
125 If the parent without custody has been granted restricted or supervised visitation because the
126 court has found that the parent with custody or any child has been the victim of domestic
127 violence, as defined in section 455.200, RSMo, by the parent without custody, the court may
128 order that the reports and records made available pursuant to this subsection not include the
129 address of the parent with custody or the child. Unless a parent has been denied custody rights
130 pursuant to this section or visitation rights under section 452.400, any judgment of dissolution
131 or other applicable court order shall specifically allow both parents access to such records and
132 reports.

133 11. Except as otherwise precluded by state or federal law, if any individual, professional,
134 public or private institution or organization denies access or fails to provide or disclose any and
135 all records and information, including, but not limited to, past and present dental, medical and
136 school records pertaining to a minor child, to either parent upon the written request of such
137 parent, the court shall, upon its finding that the individual, professional, public or private
138 institution or organization denied such request without good cause, order that party to comply
139 immediately with such request and to pay to the prevailing party all costs incurred, including, but
140 not limited to, attorney's fees and court costs associated with obtaining the requested information.

141 12. An award of joint custody does not preclude an award of child support pursuant to
142 section 452.340 and applicable supreme court rules. The court shall consider the factors
143 contained in section 452.340 and applicable supreme court rules in determining an amount
144 reasonable or necessary for the support of the child.

145 13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and
146 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the
147 custody or visitation arrangement ordered by the court best protects the child and the parent or
148 other family or household member who is the victim of domestic violence or abuse, as defined
149 in sections 455.010 and 455.501, RSMo, and any other children for whom such parent has
150 custodial or visitation rights from any further harm.

452.400. 1. **(1)** A parent not granted custody of the child is entitled to reasonable

2 visitation rights unless the court finds, after a hearing, that visitation would endanger the child's
3 physical health or impair his or her emotional development. The court shall enter an order
4 specifically detailing the visitation rights of the parent without physical custody rights to the
5 child and any other children for whom such parent has custodial or visitation rights. In
6 determining the granting of visitation rights, the court shall consider evidence of domestic
7 violence. If the court finds that domestic violence has occurred, the court may find that granting
8 visitation to the abusive party is in the best interests of the child.

9 **(2) (a)** The court shall not grant visitation to the parent not granted custody if such
10 parent or any person residing with such parent has been found guilty of or pled guilty to [a felony
11 violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim,
12 or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or
13 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a
14 child was the victim, or an offense committed in another state when a child is the victim, that
15 would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or section
16 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for
17 subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided
18 however, nothing in this subsection shall preclude the court from exercising its discretion
19 regarding the awarding of custody or visitation for a child if the parent or any person residing in
20 the home has been found guilty of or pled guilty or nolo contendere to any offense excepted or
21 excluded in this subsection] **any of the following offenses when a child was the victim:**

22 **a. A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,**
23 **566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,**
24 **566.209, 566.212, or 566.215, RSMo;**

25 **b. A violation of section 568.020, RSMo;**

26 **c. A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;**

27 **d. A violation of section 568.065, RSMo;**

28 **e. A violation of section 568.080, RSMo;**

29 **f. A violation of section 568.090, RSMo; or**

30 **g. A violation of section 568.175, RSMo.**

31 **(b) For all other violations of offenses in chapters 566 and 568, RSMo, not**
32 **specifically listed in paragraph (a) of this subdivision or for a violation of an offense**
33 **committed in another state when a child is the victim that would be a violation of chapter**
34 **566 or 568, RSMo, if committed in Missouri, the court may exercise its discretion in**
35 **granting visitation to a parent not granted custody if such parent or any person residing**
36 **with such parent has been found guilty of, or pled guilty to, any such offense.**

37 **(3)** The court shall consider the parent's history of inflicting, or tendency to inflict,

38 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on
39 other persons and shall grant visitation in a manner that best protects the child and the parent or
40 other family or household member who is the victim of domestic violence, and any other
41 children for whom the parent has custodial or visitation rights from any further harm.

42 (4) The court, if requested by a party, shall make specific findings of fact to show that
43 the visitation arrangements made by the court best protect the child or the parent or other family
44 or household member who is the victim of domestic violence, or any other child for whom the
45 parent has custodial or visitation rights from any further harm.

46 2. (1) The court may modify an order granting or denying visitation rights whenever
47 modification would serve the best interests of the child, but the court shall not restrict a parent's
48 visitation rights unless it finds that the visitation would endanger the child's physical health or
49 impair his or her emotional development.

50 (2) (a) In any proceeding modifying visitation rights, the court shall not grant
51 unsupervised visitation to a parent if the parent or any person residing with such parent has been
52 found guilty of or pled guilty to [a felony violation of chapter 566, RSMo, except for section
53 566.034, RSMo, when a child was the victim, or a violation of sections 568.020, 568.045,
54 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1)
55 of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed
56 in another state when a child is the victim, that would be a felony violation of chapter 566,
57 RSMo, except for section 566.034, RSMo, or a violation of sections 568.020, 568.045, 568.060,
58 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of
59 subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing
60 in this subsection shall preclude the court from exercising its discretion regarding the placement
61 of a child in a home in which the parent or any person residing in the home has been found guilty
62 of or pled guilty or nolo contendere to any offense excepted or excluded in this subsection] **any**
63 **of the following offenses when a child was the victim:**

64 a. **A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064,**
65 **566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206,**
66 **566.209, 566.212, or 566.215, RSMo;**

67 b. **A violation of section 568.020, RSMo;**

68 c. **A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;**

69 d. **A violation of section 568.065, RSMo;**

70 e. **A violation of section 568.080, RSMo;**

71 f. **A violation of section 568.090, RSMo; or**

72 g. **A violation of section 568.175, RSMo.**

73 (b) **For all other violations of offenses in chapters 566 and 568, RSMo, not**

74 **specifically listed in paragraph (a) of this subdivision or for a violation of an offense**
75 **committed in another state when a child is the victim that would be a violation of chapter**
76 **566 or 568, RSMo, if committed in Missouri, the division may exercise its discretion**
77 **regarding the placement of a child taken into the custody of the state in which a parent or**
78 **any person residing in the home has been found guilty of, or pled guilty to, any such**
79 **offense.**

80 (3) When a court restricts a parent's visitation rights or when a court orders supervised
81 visitation because of allegations of abuse or domestic violence, a showing of proof of treatment
82 and rehabilitation shall be made to the court before unsupervised visitation may be ordered.
83 "Supervised visitation", as used in this section, is visitation which takes place in the presence of
84 a responsible adult appointed by the court for the protection of the child.

85 3. The court shall mandate compliance with its order by all parties to the action,
86 including parents, children and third parties. In the event of noncompliance, the aggrieved
87 person may file a verified motion for contempt. If custody, visitation or third-party custody is
88 denied or interfered with by a parent or third party without good cause, the aggrieved person may
89 file a family access motion with the court stating the specific facts which constitute a violation
90 of the judgment of dissolution or legal separation. The state courts administrator shall develop
91 a simple form for pro se motions to the aggrieved person, which shall be provided to the person
92 by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved
93 parties the procedures for filing the form. Notice of the fact that clerks will provide such
94 assistance shall be conspicuously posted in the clerk's offices. The location of the office where
95 the family access motion may be filed shall be conspicuously posted in the court building. The
96 performance of duties described in this section shall not constitute the practice of law as defined
97 in section 484.010, RSMo. Such form for pro se motions shall not require the assistance of legal
98 counsel to prepare and file. The cost of filing the motion shall be the standard court costs
99 otherwise due for instituting a civil action in the circuit court.

100 4. Within five court days after the filing of the family access motion pursuant to
101 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
102 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
103 served upon the respondent by personal process server as provided by law or by any sheriff.
104 Such service shall be served at the earliest time and shall take priority over service in other civil
105 actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The
106 motion shall contain the following statement in boldface type:

107

108 "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE
109 CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO

110 RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

111 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY, VISITATION
112 OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE AGGRIEVED
113 PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

114 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE
115 VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A
116 CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

117 (3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS AGAINST
118 THE VIOLATOR;

119 (4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE
120 FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

121 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO
122 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED
123 PARTY AND THE CHILD; AND

124 (6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE
125 EXPENSES, INCLUDING ATTORNEY'S FEES AND COURT COSTS ACTUALLY
126 INCURRED BY THE AGGRIEVED PARTY AS A RESULT OF THE DENIAL OF
127 CUSTODY, VISITATION OR THIRD-PARTY CUSTODY."

128 5. If an alternative dispute resolution program is available pursuant to section 452.372,
129 the clerk shall also provide information to all parties on the availability of any such services, and
130 within fourteen days of the date of service, the court may schedule alternative dispute resolution.

131 6. Upon a finding by the court pursuant to a motion for a family access order or a motion
132 for contempt that its order for custody, visitation or third-party custody has not been complied
133 with, without good cause, the court shall order a remedy, which may include, but not be limited
134 to:

135 (1) A compensatory period of visitation, custody or third-party custody at a time
136 convenient for the aggrieved party not less than the period of time denied;

137 (2) Participation by the violator in counseling to educate the violator about the
138 importance of providing the child with a continuing and meaningful relationship with both
139 parents;

140 (3) Assessment of a fine of up to five hundred dollars against the violator payable to the
141 aggrieved party;

142 (4) Requiring the violator to post bond or security to ensure future compliance with the
143 court's access orders; and

144 (5) Ordering the violator to pay the cost of counseling to reestablish the parent-child
145 relationship between the aggrieved party and the child.

146 7. The reasonable expenses incurred as a result of denial or interference with custody or
147 visitation, including attorney's fees and costs of a proceeding to enforce visitation rights, custody
148 or third-party custody, shall be assessed, if requested and for good cause, against the parent or
149 party who unreasonably denies or interferes with visitation, custody or third-party custody. In
150 addition, the court may utilize any and all powers relating to contempt conferred on it by law or
151 rule of the Missouri supreme court.

152 8. Final disposition of a motion for a family access order filed pursuant to this section
153 shall take place not more than sixty days after the service of such motion, unless waived by the
154 parties or determined to be in the best interest of the child. Final disposition shall not include
155 appellate review.

156 9. Motions filed pursuant to this section shall not be deemed an independent civil action
157 from the original action pursuant to which the judgment or order sought to be enforced was
158 entered.